

WILD HORSE SPIRIT LIMITED

IBLA 96-39

Decided February 18, 1999

Appeal from a decision by the District Manager, Carson City District, Nevada, Bureau of Land Management, implementing the Pine Nut Mountain Wild Horse Removal Plan through a full force and effect determination. NV-030-95-47.

Affirmed.

1. Wild Free-Roaming Horses and Burros Act

If the Secretary (or his designate) determines, on the basis of information available, that an overpopulation of wild horses or burros exists on a given area of the public lands and that action is necessary to remove excess animals, the Secretary has authority to immediately remove excess animals from the range so as to achieve appropriate management levels, restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation.

APPEARANCES: Bobbi Royle, Carson City, Nevada, for the Wild Horse Spirit Ltd.; John O. Singlaub, District Manager, Carson City, Nevada, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Wild Horse Spirit Ltd. (Appellant) has appealed the October 2, 1995, "Full Force and Effect" Decision issued by the Carson City District Manager, Nevada, Bureau of Land Management (BLM), implementing the Pine Nut Mountain Wild Horse Removal Plan (Plan). BLM's authority to manage wild horse populations is provided by the Wild Free-Roaming Horses and Burros Act (the Act), as amended, 16 U.S.C. §§ 1331-1340 (1994), and implementing regulations in 43 C.F.R. Part 4700. The gather and removal of wild horses was supported by a Decision Record/Finding of No Significant Impact (DR/FONSI). The gather was scheduled to be conducted on or about November 13, 1995. A Request for Stay submitted by Appellant was denied by the Board in an Order dated November 9, 1995.

According to the Plan, removal was intended to limit the distribution of wild horses to the herd management area (HMA) by removing wild horses with established ranges outside the HMA and by removing excess wild horses from within the HMA so as to prevent a further deterioration of the Federal range, which was suffering from an overutilization of vegetative resources, and restore it to a thriving natural ecological balance, in compliance with section 3(b)(2) of the Act. Based on a June 1995 aerial census, BLM concluded that there were 455 wild horses inside the HMA and 280 outside the HMA for a total of 735 wild horses. BLM's intention was to remove all the horses and return the unadoptable/older horses to the HMA to achieve the appropriate management level (AML) of 179 wild horses in the HMA, as established in its August 1995 Pine Nut Final Multiple Use Decision.

Pursuant to 43 C.F.R. § 4770.3(c), the District Manager placed his October 1995 Decision to go forward with the removal in full force and effect. However, he stated that the removal would be delayed for 30 days to allow for an appeal period.

The October 2 Decision held, in pertinent part:

This decision is issued Full Force and Effect to allow for the timely removal of wild horses in and outside the Pine Nut HMA. Timely removal of these wild horses is necessary to prevent further over-utilization of the vegetative resource and to be in compliance with existing laws and regulations, notably; 43 CFR 4710.4 - "management of wild horses and burros shall be undertaken with the objective of limiting the animals' distribution to herd areas \* \* \*". The Full Force and Effect determination is in accordance with the regulation, 43 CFR 4770.3(c).

(October 2 Decision at 1.)

In its Notice of Appeal (NOA), Appellant makes the following contentions concerning the proposed November 1995 roundup of the Pine Nut Mountain wild horses.

A reduction of the wild horse population to a non-viable level and the elimination of it from areas of public land where it has a right, from the advent of the Wild Horse Act of 1971, is not a fair decision. There doesn't appear to be any statutory reason for the removal of horses on the "eastern half of the southern portion" of the Pine Nut HMA in the Walker Resource Area. It is, I believe, unfair to remove horses off land that is not used or occupied by the Indian land holders and for Mr. Robert Hunter of BIA to speak for all of 300 landholders in requesting their removal. This is very likely not true to the will of the land-owning people who do not have a history of fencing or complaining about the wild horses.

It would seem to me that the wild horse HMA should be a total entity instead of split north and south or as is the case relegated to a small portion of marginal habitat in the northern part of the range. I don't understand because there was nothing in what I received to justify that.

The Pine Nut Range has plenty of forage and water to support a viable wild horse population, as attests past population levels, but the herd is being reduced to accommodate a few exploitive interests that state the horses are competing. These seek to denigrate the presence of the wild horses. The roundup will de-stabilize the ecological condition and destroy the natural adaptation of the wild horse bands by reducing them to a low, non-viable herd.

To deny the right of the wild horse to occupy the public unfenced lands throughout the Pine Nut Range ignores the 1971 Wild Horse Act as well as PRIA, FLPMA, and the Multiple Use Acts, which were designed to assure fair treatment and balance among all justified presences on public land.

The whole public interest favors the survival of wild horses and for them to remain in the area of appropriate habitat adequate to ensure survival of viable populations. Token numbers are not acceptable, for the wild horse is in great peril concerning its long term survival. I believe the wild horse deserves justice and longevity.

(NOA at 1-2.)

In his Response, the District Manager states that the determination of the appropriate population level for the Pine Nut Mountain HMA was made through the multiple use decision process, not the Removal Plan. (Response at 1.) He states that the Multiple Use Decision for the Pine Nut Mountain HMA was final on August 18, 1995, and that the Decision determined that the AML is 179 wild horses. Id. He further states that years of monitoring data collected in the Carson City District and other districts in Nevada confirm that 179 wild horses easily comprise a viable population. Id. The District Manager contends that Appellant provides no data or information to the contrary. Id.

In addressing Appellant's second point that elimination of the wild horse population from the eastern half of the southern portion of the Pine Nut HMA "is not a fair decision," the District Manager states:

The Decision to remove all wild horses from the southern Pine Nut Mountains has gone through the land use planning process which began in 1982. The rationale for removing wild horses from the southern Pine Nut Mountains is explained on page 3-6 of the Draft Reno EIS [Environmental Impact Statement]

(Attachment #5) dated August 30, 1982. The decision to remove those wild horses is stated in the Reno Management Framework Plan as Decision #23 (Attachment #5) which was final on December 21, 1982. The "eastern half of the southern portion" was analyzed in the Walker RMP [Resource Management Plan]/EIS (1986). The decisions relating to Walker RMP/EIS are found in the Walker Record of Decision (ROD). The Rangeland Management Decision #5 of Walker ROD (Attachment #5) affirms the decision in the Reno Management Framework Plan to remove all wild horses from the southern Pine Nut Mountains.

Both of the Appellant's assertions have been addressed in previous management planning processes. These processes have been open to public consultation and coordination and final decisions issued.

(Response at 1.)

[1] Section 3(b)(2) of the Act, 16 U.S.C. § 1333(b)(2) (1994), provides the statutory authority for the removal of excess wild horses from the public range. Specifically, if the Secretary (or his designate) determines, on the basis of available information,

that an overpopulation exists on a given area of the public lands and that action is necessary to remove excess animals, he shall immediately remove excess animals from the range so as to achieve appropriate management levels. Such action shall be taken \* \* \* until all excess animals have been removed so as to restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation.

The goal of wild horse management is to maintain a thriving natural ecological balance among wild horse populations, wildlife, livestock, and vegetation and to protect the range from the deterioration associated with overpopulation. 16 U.S.C. § 1333(a) (1994); Dahl v. Clark, 600 F. Supp. 585, 594 (D. Nev. 1984); Commission for the Preservation of Wild Horses, supra, at 329 and cases cited. "[E]xcess animals" are defined as those "which must be removed from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area." 16 U.S.C. § 1332(f) (1994). A determination that removal is warranted must be based on research and analysis and on monitoring programs that include studies of grazing utilization, trends in range condition, actual use, and climatic factors. Michael Blake, 135 IBLA 9, 14 (1996); Animal Protection Institute of America, 117 IBLA 4, 5 (1990).

The legislative history of the Act reflects that the Secretaries of Interior and Agriculture "are given a high degree of discretionary authority for the purposes of protection, management, and control of wild, free-roaming horses and burros on the public lands," Conf. Rep. No. 92-681, 92nd Cong., 1st Sess. (1971), reprinted in 1971 U.S.C.C.A.N. 2159, 2160.

Departmental regulations at 43 C.F.R. §§ 4710.3-1 and 4710.4 provide that the management of wild horses is to occur within designated HMA's or within more extensive "herd areas," which are defined at 43 C.F.R. § 4700.0-5(d) as the "geographic area identified as having been used by a herd as its habitat in 1971." BLM is authorized by 43 C.F.R. § 4170.4 to remove wild horses from areas outside herd areas. Animal Protection Institute of America, 118 IBLA 20, 24-25 (1991); Craig C. Donner, 111 IBLA 332, 342 (1989).

A BLM decision ordering the removal of wild horses from inside an HMA, in order to achieve statutory objectives, is committed to its sound discretion. See Animal Protection Institute of America, 109 IBLA 112, 123-24 (1989). As we noted in our November 9, 1995, Order, Appellant presents no evidence even suggesting that the viability of the wild horse herd grazing in the Pine Nut Mountain HMA will be threatened, in either the long- or short-term, by the removal planned by BLM. Moreover, the determination of the AML for the HMA was made by BLM in an August 1995 Final Multiple Use Decision. There is no evidence in the record that Appellant appealed that decision.

Appellant has specifically challenged BLM's decision to remove all wild horses from the eastern half of the southern portion of the Pine Nut Mountain HMA. Appellant asserts that it is unfair to remove horses from land that is not used by or occupied by "the Indian land owners." Appellant further alleges that the Bureau of Indian Affairs requested the removal even though the "land-owning people do not have a history of fencing or complaining about the wild horses." (NOA at 1.)

As noted by BLM in its Response, Appellant objects to a prior decision, contained first in the 1982 Reno Management Framework Plan, later reaffirmed in the 1986 Walker Resource Management Plan, that provided for the total removal of wild horses from the southern portion of the Pine Nut Mountain HMA, so as to prevent, at the request of private landowners, any straying onto their lands. (Response at 1, referring to Attachment #5.) Thus, the continued removal of wild horses, at least from the southern part of the HMA, is consistent with the prior land-use planning decisions of BLM. See, e.g., Animal Protection Institute of America, 117 IBLA at 218 n.4.

We find that Appellants' concerns are cogently and succinctly answered by BLM's responses and that those responses are supported by the record. The alleged shortcomings claimed by Appellant with the removal action as set forth in the DR/FONSI are unsupported by evidence and fail to cast doubt on either the necessity or propriety of the removal or its conformance to applicable law and regulation. As we have previously held in appeals of horse removal actions, the burden is on the appealing party to show that BLM's experts erred in collecting the data on which the removal is based, in interpreting that data, or in reaching the conclusions to which it led. Commission for the Preservation of Wild Horses, *supra*, at 330-31. Moreover, BLM is not required to wait until the range is damaged before it takes preventive action; proper range management dictates

herd reduction before the herd causes damage to the rangeland. If the record establishes current resource damage or a significant threat of resource damage, removal is warranted.

Appellants have not shown that this removal was based on erroneous information, was unnecessary, or was improperly carried out.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

---

James P. Terry  
Administrative Judge

I concur:

---

John H. Kelly  
Administrative Judge